A **HASRAT USAHA SDN BHD**

v.

PATI SDN BHD

B COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
HISHAMUDIN MOHD YUNUS JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: W-03-242-2008]
C 17 DECEMBER 2010

CIVIL PROCEDURE: *Admission - Judgment on admission, application for - Admission of amount of debt owing through letter - Whether a clear and unequivocal admission - Whether letter merely*
D *amounted to enquiry or seeking confirmation of amount of debt owing - Whether court to exercise discretion to enter judgment - Rules of the High Court 1980, O. 27 r. 3*

CIVIL PROCEDURE: *Judgment - Admission - Judgment on admission of facts - Admission of amount of debt owing through letter -*
E *Whether a clear and unequivocal admission - Whether letter merely amounted to enquiry or seeking confirmation of amount of debt owing - Whether court to exercise discretion to enter judgment - Rules of the High Court 1980, O. 27 r. 3*

F The defendant had appointed the plaintiff as its sub-contractor. The plaintiff filed the present action seeking RM2,040,586.38 being the balance of the sub-contract monies owed by the defendant. The defendant disputed the claim and counterclaimed against the plaintiff for alleged delays in completion of works and
G for costs of rectification works. By an undated letter the defendant had requested a confirmation from the plaintiff on the balance due to the plaintiff as at 31 December 2004. In the defendant's letter, the plaintiff was requested to advise the defendant's auditors "of the correctness of the balances as stated below" which according
H to the defendant's record was RM1,310,806.02. The plaintiff replied that according to its records the correct amount was RM2,040,586.38. The plaintiff applied for judgment by admission, founded on the defendant's letter. Counsel for the defendant submitted that the wording of the said letter taken as a whole
I was not an admission of debt but merely an enquiry and request for confirmation of the state of account. It is argued further that by reason of the plaintiff disputing that amount stated therein, it

could not be said that the content of the defendant's letter was an unequivocal admission of a debt. The Senior Assistant Registrar allowed the plaintiff's application under O. 27 r. 3 of the Rules of the High Court 1980 (RHC 1980) and entered a judgment on an admission of fact by the defendant for the amount of RM1,310,806.02. Hence this appeal by the defendant.

Held (dismissing the appeal)
Per Azhar Ma'ah JCA (Abu Samah Nordin JCA concurring) for the majority:

(1) Order 27 r. 3 provides summary procedure whereby the court in its discretion may allow a judgment to be entered where there is an unequivocal admission of fact which entitles the plaintiff to enter judgment against the defendant. The admission must be a clear admission of all and not simply evidence of some of the facts upon which the plaintiff relies to establish his case of action. (paras 9-10)

(2) Although the plaintiff disputed the correctness of the amount stated in the said letter, there was a clear and unequivocal admission by the defendant that there was a balance of RM1,310,806.02 due to the plaintiff. Up to that amount, the defendant was under obligation to pay to the plaintiff. It did not matter that the defendant was merely enquiring and seeking confirmation of the correctness of the figure. The fact still remained that the defendant's own accounting records showed that there was an outstanding sum of RM1,310,806.02 payable to the plaintiff. (para 10)

Per Hishamudin Mohd Yunus JCA (dissenting):

(1) In an application under O. 27 r. 3, the applicant must satisfy the court that the alleged admission is unequivocal. The defendant's letter did not amount to an unequivocal admission of fact. Firstly, the content of the letter was in the nature of an inquiry rather than in the nature of an admission. Secondly, the defendant's inquiry was not for the purpose of satisfying any demand from the plaintiff for the repayment of a debt or for satisfying any legal liability towards the plaintiff. Instead, it was for 'audit' purposes of the defendant. Thirdly, the inquiry was not made in response to any demand made by the plaintiff but was merely made on the defendant's own volition. Fourthly, the plaintiff did not confirm the sum inquired by the defendant but instead mentioned a different sum. (paras 34-37)

A **(2)** Even if the defendant's inquiry can be regarded as an unequivocal admission of fact, still the court has a discretion as to whether judgment should be entered, depending on the circumstances of the case. In the present case, the sum 'RM2,040,586.38' as claimed in the statement of claim seemed
B to be different from the sum 'RM2,040,586.38' as claimed in the plaintiff's response to the defendant's inquiry. The basis of the plaintiff's claim was not clear or consistent. How the plaintiff arrived at the sum of RM2,040,586.38 was an issue to be tried. Thus, it was not justified that at this juncture
C judgment be entered for the sum of RM1,310,806.02 in favour of the plaintiff. (para 38)

Bahasa Malaysia *Translation Of Headnotes*

D Defendan telah melantik plaintif sebagai sub-kontraktornya. Plaintif telah memfail guaman semasa bagi menuntut RM2,040,586.38 yang dikatakan baki wang sub-kontrak yang masih terhutang kepadanya. Defendan mempertikai tuntutan, dan telah memfail tuntutan balas terhadap plaintif kerana kelewatan menyiapkan kerja serta bagi
E menuntut kos bagi kerja-kerja baikpulih. Melalui satu surat tanpa tarikh, defendan telah memohon pengesahan dari plaintif berkaitan baki yang masih terhutang kepada plaintif setakat 31 Disember 2004. Dalam surat defendan tersebut, plaintif diminta supaya menasihati juruodit defendan "mengenai ketepatan baki yang
F tercatit di bawah" yang mengikut rekod defendan adalah RM1,310,806.02. Plaintif menjawab bahawa menurut rekodnya jumlah yang betul adalah RM2,040,586.38. Berikutnya plaintif memohon penghakiman melalui pengakuan, berdasarkan surat defendan tersebut. Peguam defendan berhujah bahawa
G perbahasaan surat dilihat secara keseluruhan bukan merupakan satu pengakuan hutang, sebaliknya hanyalah satu pertanyaan dan permintaan untuk mengesahkan penyata akaun. Dihujahkan selanjutnya bahawa oleh kerana plaintif mempertikai jumlah yang dicatit di situ, maka kandungan surat defendan tersebut tidak
H boleh dikatakan sebagai satu pengakuan hutang yang tak berbelah bagi. Penolong Kanan Pendaftar membenarkan permohonan plaintif di bawah A. 27 k. 3 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980') sekaligus merekodkan penghakiman berdasarkan pengakuan fakta oleh defendan bagi jumlah RM1,310,806.02. Defendan telah merayu.
I

Diputuskan (menolak rayuan)
Oleh Azhar Ma'ah HMR (Abu Samah Nordin HMR menyetujui) menyampaikan penghakiman majoriti:

(1) Aturan 27 k. 3 memperuntukkan prosedur terus di mana mahkamah dengan kuasa budibicaranya boleh membenarkan penghakiman dimasuki jika terdapat pengakuan fakta tak berbelah bagi yang mewajarkan plaintif memasukkan penghakiman terhadap defendan. Pengakuan hendaklah satu pengakuan jelas terhadap kesemua fakta dan bukan hanya kepada keterangan sebahagian dari fakta di atas mana plaintif bergantung untuk membuktikan kesnya.

(2) Walaupun plaintif mempertikai ketepatan jumlah yang tercatit di dalam surat tersebut, wujud pengakuan yang jelas dan tak berbelah bagi oleh defendan bahawa terdapat baki sebanyak RM1,310,806.02 yang terhutang kepada plaintif. Adalah tidak menjadi hal bahawa defendan hanya membuat pertanyaan dan menuntut pengesahan mengenai ketepatan jumlah yang tercatit. Faktanya masih lagi bahawa rekod perakaunan defendan sendiri menunjukkan bahawa terdapat sejumlah RM1,310,806.02 yang masih belum di bayar kepada plaintif.

Oleh Mohd Hishamudin Yunus HMR (menentang):

(1) Dalam suatu permohonan di bawah A. 27 k. 3, pemohon hendaklah memuaskan mahkamah bahawa pengakuan yang dikatakan itu adalah tak berbelah bagi. Surat defendan tidak sampai kepada suatu pengakuan tak berbelah bagi. Pertama, kandungan surat adalah berbentuk pertanyaan dan bukannya pengakuan. Kedua, pertanyaan defendan bukannya sebagai memenuhi apa-apa tuntutan pembayaran hutang oleh plaintif atau memenuhi apa-apa tanggungan undang-undang kepada plaintif. Ia sebaliknya adalah untuk maksud pengoditan defendan. Ketiga, pertanyaan tidak dibuat bagi membalas apa-apa tuntutan yang dibuat oleh plaintif tetapi dibuat atas kerelaan defendan sendiri. Keempat, plaintif tidak mengesahkan jumlah yang ditanyai oleh defendan tetapi sebaliknya menyebut satu jumlah lain.

(2) Jikapun pertanyaan defendan boleh dianggap sebagai satu pengakuan tak berbelah bagi fakta, mahkamah masih mempunyai budibicara sama ada untuk memasukkan penghakiman atau tidak, bergantung kepada halkeadaan kes.

A Dalam kes semasa, jumlah 'RM2,040,586.38' yang dituntut di dalam penyata tuntutan kelihatan berbeza dari jumlah 'RM2,040,586.38' yang dituntut di dalam jawapan plaintif kepada pertanyaan defendan. Asas tuntutan plaintif adalah tidak jelas atau konsisten. Bagaimana plaintif mencapai angka
B RM2,040,586.38 adalah satu isu yang perlu dibicarakan. Oleh itu, adalah tidak berjustifikasi di peringkat ini bahawa penghakiman harus dimasuki untuk jumlah RM2,040,586.38 untuk manfaat plaintif.

C **Case(s) referred to:**
Affin Bank Bhd v. Successcom Enterprise Sdn Bhd [2009] 4 CLJ 764 CA ***(refd)***
Carabao Exports Pty Ltd v. Online Management Consultants Sdn Bhd & Ors [1988] 1 LNS 88 HC ***(refd)***
Perwira Habib Bank (M) Bhd v. Hj Abdullah Hj Sulaiman & Anor [1985]
D *2 CLJ 489; [1985] CLJ (Rep) 639 HC* ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 27 r. 3

For the appellant - C Soosay Nathan (Mohamad Fahzan Mohd Noor with
E *him); M/s Christie Soosay Nathan & Assocs*
For the respondent - Wong Suk May; M/s Wong Gowry & Yip

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-747-2006]

Reported by Amutha Suppayah
F

JUDGMENT

Azhar Ma'ah JCA:

G

[1] This appeal is brought by the defendant against the decision of the High Court Judge, Kuala Lumpur, who, on 28 October 2008 dismissed its appeal to set aside the decision of the Senior Assistant Registrar allowing the plaintiff's application under O. 27
H r. 3 of the Rules of the High Court 1980 (RHC 1980) to enter a judgment on an admission of fact by the defendant for the amount of RM1,310,806.02 and interest @ 8% per annum from the date of the summons until full settlement.

I **[2]** The facts of the case as stated in the trial judge's grounds of judgment are these:

The defendant appointed the plaintiff as its sub-contractor (see Letter of Offer dated 18.10.2000 in enclosure 4 exhb. "RS-1"). The sub-contract sum was RM11,720,207.25. The plaintiff says that all works under the sub-contract had been completed on 1.8.2002. The plaintiff filed the present action seeking to enter judgment for RM2,040,586.38 which the plaintiff claims is the balance of the sub-contract monies owed to them by the defendant.

The defendant disputes the plaintiff's claim and says that the sub-contract works were to have been completed by 27.2.2001. Therefore, there was a delay of 520 days and the defendant counterclaims against the plaintiff for the sum of RM1,820,000.00. The defendant further claims the sum of RM338,095.70 being costs of rectification works which the defendant says the plaintiff has failed to carry out. Therefore, the defendant claims against the plaintiff a total sum of RM2,158,095.00.

Plaintiff's case

The plaintiff avers that by an undated letter the defendant requested a confirmation from the plaintiff on the balance due to the plaintiff as at 31.12.2004. In the defendant's letter, the plaintiff was requested to advise the defendant's auditors "of the correctness of the balances as stated below" which according to the defendant's record, the balance due to the plaintiff as at 31.12.2004 is RM1,310,806.02 (see enclosure 4 exh. "RS-2"). The plaintiff replied that according to its records the correct amount is RM2,040,586.38.

[3] Order 27 r. 3 of the Rules of the High Court 1980, reads as follows:

Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by summons.

[4] It is in the light of the above provision that the plaintiff applied for judgment by admission, founded on a letter from the defendant seeking confirmation that a sum of RM1,310,806.02 was due to the plaintiff. For clarity we reproduce the letter in question which reads.

A HASRAT USAHA SDN. BHD.
(Co. No. 89823-V)
No. 50-4-3A, Level 4, Wisma UOA Damansara,
No. 50, Jalan Dungun, Bukit Damansara, 50490 Kuala Lumpur
Tel: 03-2715 1088 Fax: 03-2715 2088

B PATI SDN. BHD.
17th Floor, Menara 2, Faber Towers
Jalan Desa Bahagia
Taman Desa
C 58100 Kuala Lumpur

Dear Sir,

Confirmation Request – PJR006 Project

D For the purpose of the audit of our Company's financial statement, please advise our auditors of the correctness of the balances as stated below.

According to our records, the balance due to you is:

As at: 31.12.2004 Amount: RM1,310,806.02

E Please sign on the space provided below if you agree with the above balance. If the above balance is not in agreement with your records, kindly detail below, the full particulars of the difference, in either case, please sign and return this letter directly to our auditors.

F Skelchy Su Lim & Associates
9th Floor, MCB Place
No. 6, Changkat Raja Chulan
50200 Kuala Lumpur
G Malaysia

Tel: (603) 2032 3828
Fax: (603) 2032 1868

This is not a request for payment and remittances should not be made to the auditors.

H

Yours faithfully,

HASRAT USAHA SDN. BHD.
(COMPANY NO: 89823-V)
Sgd.
I ...

Please do not detach.

In accordance with our/my record, the balance shown above is correct except as noted below.

Company stamp : ...

Signature and designation : ...

Date : ...

[5] Counsel for the defendant submitted that the wording of the said letter taken as a whole is not an admission of debt but merely an enquiry and request for confirmation of the state of account. It is argued further that by reason of the plaintiff disputing that amount and stating that the actual amount due and owing to the plaintiff from the defendant was RM2,040,586.38, there was a real dispute and it cannot be said that the content of the defendant's letter was an unequivocal admission of a debt.

[6] Though not crucial and relevant to this appeal before us, I would, for the sake of completeness, mention that the defendant in its submission also submitted that it had a defence of set-off that arose from certain remedial and rectification works on defective jobs by the plaintiff and counterclaim for liquidated and ascertained damages. It is averred that by reason of the plaintiff failing to complete the work on time, the defendant had to employ someone else to carry out certain rectification works. It is also alleged that the defendant had to pay RM1,820,000 as LAD. This had cost the defendant a total of RM2,158,095.70 which it is now claiming from the plaintiff by way of set-off and counterclaim.

[7] Order 27 r. 3 provides summary procedure whereby the court in exercising its discretion may allow a judgment to be entered in the circumstances where there is an unequivocal admission of fact which entitles the plaintiff to enter judgment against the defendant.

[8] In our instant case, the main thrust of the argument for the defendant was that the letter in question taken as a whole is actually in the nature of enquiry arid not an admission of debt. In fortification of this argument counsel for the defendant produced a passage from the judgment of Godfrey J in *Carabao Exports Pty Ltd v. Online Management Consultants Sdn. Bhd. & Ors* [1988] 1 LNS 88; [1988] 3 MLJ 271. The facts of that case are these:

A The plaintiff entered into a contract with the defendants for the sale of cattle. A dispute arose between the parties and the plaintiff filed the present application for judgment on admissions. The plaintiff contended that as it had already obtained judgment against the first defendants, the court should treat the third defendant as having admitted the plaintiff's claim as the third was in partnership with the first defendants. However, this allegation of partnership was not accepted by the third defendant. The second contention of the plaintiff is that since the third defendant had collected the cattle without tendering the shipping documents to the shipping agents and there was an admission in the form of an indemnity given by the third defendant to the shipping agents, the plaintiff's application for judgment should be allowed.

[9] It was decided *inter alia* that the admission must be a clear admission of all and not simply evidence of some of the facts upon which the plaintiff relies to establish his case of action. In the circumstances of this case, it was held there was no such admission.

[10] With respect it must be noted that the facts of the above case are distinguishable. As can be seen from the facts of the instant case the letter exh. "RS3" emanated from the defendant's own office and presumably the contents of that letter must have come from the defendant's own accounts department. Although the plaintiff disputed the correctness of the amount stated in the said letter, claiming that a bigger amount was due and owing from the defendant we are of the view that, there is a clear and unequivocal admission by the defendant that there was a balance due to the plaintiff to the tune of RM1,310,806.02. Up to that amount, the defendant is under obligation to pay to the plaintiff. It does not make any difference that the defendant was merely enquiring and seeking confirmation of the correctness of the figure. The facts still remained that the defendant's own accounting records show that there was an outstanding sum of RM1,310,806.02 payable to the plaintiff. Accordingly the appeal of the defendant is dismissed with costs.

[11] My learned brother A. Samah Nordin, JCA had seen this judgment and expressed his agreement with it.

Hishamudin Mohd Yunus JCA (dissenting):

[12] This is an appeal by the appellant/defendant (Hasrat Usaha Sdn. Bhd.) against the decision of the learned judge of the High Court of Kuala Lumpur given on 28 October 2008. The learned judge had dismissed the appellant's appeal against the decision of the learned Senior Assistant Registrar given on 7 December 2007. The learned Senior Assistant Registrar had allowed the respondent's/plaintiff's (Pati Sdn. Bhd.) application before her pursuant to O. 27 r. 3 of the Rules of the High Court 1980. Dissatisfied with the decision of the learned Senior Assistant Registrar, the appellant had appealed to the judge in chambers.

[13] The writ of summons and the statement of claim were filed on 28 July 2006.

[14] The statement of defence and counter claim was filed on 30 November 2006.

[15] The reply to the statement of defence and defence to the counter claim was filed on 12 January 2007.

[16] The O. 27 r. 3 application was filed on 27 November 2007.

[17] Order 27 r. 3 states:

> **Judgment on admission of facts (O. 27 r. 3)**
>
> 3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by summons.

[18] I am allowing the appeal with costs. The following are my reasons.

[19] The respondent's claim against the appellant is for a sum of RM2,040,586.38. It is a claim for breach of contract. The respondent claims that it had under a subcontract performed certain construction works (works pertaining to roadwork, roadside drains, sewerage and street lighting, etc.) for the appellant who is the main contractor of a project in Putrajaya. The total costs of

A the works under the subcontract are RM11,285,551.51. Although the appellant had made payments to the respondent, nonetheless, a sum of RM2,040,586.38 is, allegedly, still outstanding.

[20] The appellant in its defence alleges defective works on the
B part of the respondent and is claiming by way of a counter claim against the respondent a sum of RM338,095.70 being the total sum incurred by the appellant to remedy the defects. There is also a further counter claim alleging a delay of 520 days on the part of the respondent in completing the works; and the appellant is
C claiming against the respondent a sum of RM1,820,000 as liquidated ascertained damages. The total sum the appellant is claiming against the respondent by way of counter claim is RM2,158,095.70

D **[21]** By an undated letter, the appellant had asked the respondent as to whether as at 31 December 2004 there was a sum of RM1,310,806.02 owing by the appellant to the respondent. It is not stated as to when this query was sent to the respondent. The query was 'For the purpose of the audit of
E our (the appellant's) company's financial statement'. The letter of inquiry reads:

HASRAT USAHA SDN. BHD.
(Co. No.89823-V)
No. 50-4-3A, Level 4, Wisma UOA Damansara
F No. 50 Jalan Dungun, Bukit Damansara, 50480 Kuala Lumpur
Tel: 03-27131088 Fax: 03-27152088

PATI SDN BHD
17th Floor, Menara 2, Faber Towers
Jalan Desa Bahagia
G Taman Desa
58100 Kuala Lumpur

Dear Sir,

Confirmation Request – PJR006 Project

H

For the purpose of the audit of our Company's financial statements, please advice our auditors of the correctness of the balances as stated below.

According to our records, the balance due to you is:

I

As at: 31.12.2004 Amount: RM1,310,806.02

Please sign in the space provided below if you agree with the above balance. If the above balance is not in agreement with your records, kindly detail below, the full particulars of the difference. In either case, please sign and return this letter directly to our auditors:

Skelchy Su Lim & Associates
9th Floor, MCB Plaza
No. 6, Changkat Raja Chulan
50200 Kuala Lumpur
Malaysia

Tel: (603)20323828
Fax: (603)20321868

This is not a request for payment and remittances should not be made to the auditors.

Yours faithfully,

HASRAT USAHA SDN BHD
(COMPANY NO: 89823-V)
(sgd - illegible)

...

Please do not detach

Our records, the amount shown below is correct.

In accordance with xxx

Bal as per cert 17: RM1,758,447.59

Retention: RM282,138.79

RM2,040,586.38

Company stamp: SOON CHONG HOONG
SENIOR GENERAL MANAGER
CONTRACTS

Signature and designation: [Illegible signature]

Date:

[22] This undated letter was received by the respondent on 19 August 2005.

[23] The respondent responded to the inquiry. However, the response, just like the appellant's inquiry, is undated. And, also like in the case of the appellant's inquiry, it is not stated in the affidavits as to when the response was sent to the appellant. But it is probable that the response was communicated before 28 October 2005 (this is the date of the respondent's demand letter to the appellant – but I will come to this letter shortly). Be that as it may, in its undated response, the respondent stated that the sum owed by the appellant to it was RM2,040,586.38. This sum, according to the respondent, was made up of two items, namely:

(i) 'Bal as per cert 17' – RM1,758,447.59; and

(ii) 'Retention' – RM282,138.79.

[24] In its affidavits, the respondent did not clarify what it meant by 'Bal as per cert 17'; nor is the alleged 'cert 17' exhibited. But I take 'Bal as per cert 17' to mean the balance sum owing to the respondent as stated in Certificate No. 17. Now, under the contractual arrangements, for the purpose of payments, certificates were issued by the defendant/appellant from time to time pursuant to para. E(i) of the contract document which reads:

> **(E) Progress Payment and Retention**
>
> (i) Progress Payment shall be made to you at monthly intervals upon certification by Hasrat Usaha Sdn Bhd's authorized personnel of satisfactory completion of your works.

[25] There is reference to progressive payments and certifications in paragraph 4.2 of the statement of claim. This paragraph states:

> 4.2 Bayaran progresif akan dibuat kepada Plaintif setiap bulan berdasarkan kepada perakuan (certification) oleh pihak Defendan atas penyempurnaan kerja Plaintif secara memuaskan.

[26] The above averment is not disputed.

[27] By 'Retention' I take it to mean the retention sum under subparagraphs (ii), (iii) and (iv) of para. E of the contract document. These subparagraphs read:

> (ii) All payments shall be subjected to 10% retention and up to the maximum of 5% of the Sub-Contract Sum or Revised Sub-Contract Sum whichever is higher.

(iii) The first portion of retention sum (2 ½%) shall be released upon issuing of Certification of Practical Completion by PJHSB.

(iv) The final portion of retention sum (2 ½%) shall be released upon issuing of Final Certification by PJHSB.

[28] 'PJHSB' means Putrajaya Holdings Sdn Bhd. PJHSB is the employer of the project.

[29] The retention sum is referred to in the statement of claim as follows:

4.3 Kesemua bayaran adalah tertakluk kepada tahanan ('retention') sebanyak 5% dan sehingga tahap maksima sebanyak 5% daripada jumlah kontrak atau jumlah kontrak yang telah disemak (revised).

4.4 Bahagian pertama jumlah tahanan (2 ½%) akan dilepaskan sejurus selepas Pengeluaran Sijil Penyiapan Kerja ('Certification of Practical Completion') oleh Putrajaya Holdings Sdn Bhd ('PJHSB'), iaitu Majikan di bawah projek tersebut.

4.5 Bahagian akhir wang tahanan (2 ½%) akan dilepaskan sejurus selepas Pengeluaran Sijil Terakhir (Final Certification) oleh PJHSB.

[30] These averments of the plaintiff are also not disputed.

[31] Then in para. 5 of the statement of claim it is alleged as follows:

5. Plaintif telah memulakan kerja-kerja pembinaan di bawah Surat Penerimaan Tawaran tersebut pada atau sekitar 18.10.2000 dan menyempurnakan kerja-kerja tersebut pada 1.8.2002 di mana terdapatnya suatu baki jumlah tertunggak sebanyak RM2,040,586.38 di mana butir-butirnya adalah dalam pengetahuan defendan dan yang mana butir-butir ringkasnya adalah seperti berikut:

Butir-butir

Jumlah nilai kerja yang disempurnakan	RM8,357,958.79
Campur: Nilai kerja-kerja perubahan (variation works)	RM2,927,592.72
	RM11,285,551.51

Tolak: Jumlah yang telah dibayar (berdasarkan kepada Sijil 1 sehingga 15)	RM	9,250,714.38
	RM	2,034,837.13
Baki b/h	RM	2,034,837.13
Campur : Senarai tolakan	RM	5,749.25
	RM	2,040,586.38

[32] This allegation is repeated in para. 5 of the respondent's/plaintiff's supporting affidavit. This allegation in para. 5 of the statement of claim (and in para. 5 of the affidavit in support) is denied by the appellant/defendant.

[33] By a letter of 28 October 2005 the respondent's solicitors' (Messrs S. M. Wong & Gowry) demanded from the appellant a sum of RM2,040,586.38 as allegedly a sum still owing by the appellant under the project. This letter, unfortunately, is not exhibited. But that such a demand was made appears not to be disputed.

[34] For an applicant to succeed in an application under O. 27 r. 3 he must satisfy the court that the alleged admission is unequivocal (see *Perwira Habib Bank (M) Bhd v. Hj Abdullah Hj Sulaiman & Anor* [1985] 2 CLJ 489; [1985] CLJ (Rep) 639). In my judgment, the appellant's undated letter to the respondent does not amount to an unequivocal admission of fact under O. 27 r. 3. Firstly, the content of the letter is in the nature of an inquiry rather than in the nature of an admission.

[35] Secondly, the appellant's inquiry is not for the purpose of satisfying any demand from the respondent for the repayment of a debt or for satisfying any legal liability towards the respondent. Instead, it was for 'audit' purposes of the appellant.

[36] Thirdly, it is to be appreciated that when the appellant made the inquiry, it was not in response to any demand for any sum made by the respondent to the appellant. The inquiry was sent to the respondent on the appellant's own volition.

[37] Fourthly, the respondent did not confirm the sum inquired by the appellant. Instead the respondent mentioned a different sum as the amount owing, a sum much bigger than the appellant's figure.

[38] Even if the appellant's inquiry can in law be regarded as an unequivocal admission of fact, still the court has a discretion as to whether judgment should be entered, depending on the circumstances of the case (see *Affin Bank Bhd v. Successcom Enterprise Sdn Bhd* [2009] 4 CLJ 764). In the circumstances of the present case, I am not minded to exercise my discretion in the respondent's favour. My reason is that the sum 'RM2,040,586.38' as claimed in para. 5 of the statement of claim (and also in para. 5 of the respondent's affidavit in support) seems to be different from the sum 'RM2,040,586.38' as claimed in the respondent's undated response to the appellant's undated inquiry. My grounds for so saying are two-fold. Firstly, while para. 5 of the respondent's statement of claim (and para. 5 of the respondent's affidavit in support) refers to 'Sijil 1 hingga 15' and 'Senarai tolakan', the respondent's response to the appellant's inquiry, on the other hand, refers to 'Bal as per cert 17' and 'Retention'. We are left in the dark what Certificate No. 17 is all about; or, for that matter, what Certificates 1 to 15 and 'Senarai tolakan' are all about. Why does para. 5 of the statement of claim make no mention at all of Certificate No. 17? The respondent fails to explain this omission. Secondly, while para. 5 of the statement of claim (as well as para. 5 of the affidavit in support) does not assert that the sum of RM2,040,586.38 that the respondent claims from the appellant includes any retention sum, the respondent's response to the appellant's inquiry, on the other hand, states that the sum of RM2,040,586.38 mentioned in the response includes a retention sum of RM282,138,79.

[39] What all the above means is that the basis of the respondent's claim itself is not clear or not consistent. Indeed, the respondent's claim is confusing. In my judgment, how the respondent arrived at the sum of RM2,040,586.38 ought to be an issue to be tried; and for this reason I do not think that it is justified that at this juncture judgment ought to be entered for the sum of RM1,310,806.02 in favour of the respondent.

[Appeal allowed with costs.]